

**IN THE UNITED STATES DISTRICT
COURT FOR THE NORTHERN DISTRICT
OF OHIO EASTERN DIVISION**

**IN RE: NATIONAL PRESCRIPTION
OPIATE LITIGATION**

MDL NO. 2804

THIS DOCUMENT RELATES TO:
All Cases

HON. JUDGE DAN A. POLSTER

**SMALL DISTRIBUTOR DEFENDANTS' JOINDER IN OPPOSITIONS
TO PEC'S MOTION FOR LEAVE TO TAKE TRIAL PRESERVATION
DEPOSITION OF DAVID KESSLER, M.D.**

Henry Schein, Inc., Henry Schein Medical Systems, Inc., Insource, Inc., General Injectables & Vaccines, Inc., H.D. Smith LLC, f/k/a. H. D. Smith Wholesale Drug Co., Prescription Supply Inc., and Anda, Inc. (collectively, the “Small Distributor Defendants”) file this Joinder in the Distributors’ *Opposition to PEC’s Motion for Leave to Take Trial Preservation Deposition of David Kessler, M.D.* (Doc. No. 3597, the “Distributors’ Opposition”) and *Manufacturing Defendants’ Opposition to Plaintiffs’ Executive Committee’s Emergency Motion for Leave to Take Trial Preservation Deposition of David Kessler* (Doc. No. 3598, the “Manufacturers’ Opposition”) (collectively, the “Oppositions”).

The Plaintiffs’ Executive Committee (“PEC”) has sought leave to take a “trial preservation” deposition of Plaintiffs’ manufacturer marketing expert, Dr. David Kessler. Certain defendants in the MDL filed the Oppositions on January 8, 2021.

The Small Distributor Defendants join the Oppositions and adopt and incorporate them by reference. For the reasons set forth by other defendants in the Oppositions, it would be unfair, inappropriate, and unduly prejudicial to allow Dr. Kessler to disclose any expert opinions

regarding Distributors for the first time in a “trial preservation deposition” untethered to any particular case.

For the reasons given in the Oppositions (incorporated here by reference), which the Small Distributor Defendants join, the PEC’s Motion should be denied. Alternatively, if the PEC is allowed to take a trial preservation deposition, Dr. Kessler should be precluded from offering expert testimony regarding the Small Distributor Defendants during any such deposition, and plaintiffs should be precluded from using any such testimony against the Small Distributor Defendants in any future proceeding.

Dated: January 8, 2021

Respectfully submitted,

/s/ William E. Padgett

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CERTIFICATE OF SERVICE

I hereby certify that on January 8, 2021, I electronically filed the foregoing with the clerk of the Court using the CM/ECF system, which will send notification of such filing to the attorneys of record at their email addresses on file with the Court.

/s/ Brandan J. Montminy

Brandan Montminy